

# Calendar No. 1110

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-1099

## EAGLE LAKE TIMBER CO., A PARTNERSHIP, OF SUSANVILLE, CALIF.

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AUGUST 12 (legislative day, AUGUST 11), 1970.—Ordered to be printed

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Mr. EASTLAND, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 1749]

The Committee on the Judiciary, to which was referred the bill (H.R. 1749) for the relief of Eagle Lake Timber Co., a partnership, of Susanville, Calif., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to pay the Eagle Lake Timber Co., a partnership comprised of Mr. W. Crook, John B. Crook, R. H. Emmerson, and A. A. Emmerson, of Susanville, Calif., \$43,690 in full satisfaction of its claims against the United States for compensation for losses incurred in connection with the performance of a timber sale contract dated May 25, 1964, No. 11-150, between the company and the Forest Service, Department of Agriculture, based on the fact that the company failed, under the provision of the contract for amortizing road costs, to recover a substantial portion of the road construction cost incurred before the contract was terminated by mutual consent of the parties thereto because of a forest fire.

#### STATEMENT

In its favorable report on the bill, the House of Representatives set forth the facts in the case as follows:

The bill would authorize the payment of \$43,690 to a company for the cost of roads which were constructed pursuant to a timber sale contract. The figure stated in H.R. 1749 represents the loss the company suffered since that amount had not been amortized when the contract was canceled due to a forest fire which swept over most of the timber remaining to be cut under the contract. The Department of Agriculture stated that the contract covered the sale of an estimated 25,030 thousand board feet of national forest timber to Eagle Lake Timber Co.

The timber sale was awarded to Eagle Lake Timber Co., after it bid successfully against one other bidder. On September 5, 1966, most of the uncut portion of the sale was burned over by a fire caused by lightning. At the time of the fire, 10,592 thousand board feet of timber had been cut and removed. Most of the remaining timber designated for sale under the contract, totaling an estimated 14,438 thousand board feet, together with intermingled undesignated timber which was intended to be left uncut, was affected by the fire. While both designated and undesignated timber affected by the fire were subject to deterioration, continuing over time, it nevertheless was merchantable. In such situations in California, it is both economically feasible and customary to salvage, log, and manufacture fire-affected timber into lumber products.

Shortly after the fire, Mr. John B. Crook, representing the Eagle Lake Timber Co., met with the Forest Service seeking relief under the sale contract. Mr. Crook was advised of the customary choices available under the contract. They were:

1. Continue operations, buying all fire-affected timber on the sale at contract rates; and
2. Apply to have the contract cancelled without liability for its incompleteness.

The Forest Service offered to explore a third possibility whereby Eagle Lake could continue operations buying all affected timber at contract rates, except in portions of the sale area where prefire sale operations had been entirely completed.

In response to Mr. Crook's inquiries, he was told that the Forest Service had no authority under the contract to reduce timber prices or to pay Eagle Lake for the cost of advance roadbuilding not yet recovered by timber cutting. Mr. Crook advised he would recommend his firm that it apply for contract cancellation, and in that event, would seek enactment of a private relief bill. The Forest Service suggested, and it was agreed, that engineers representing each party would meet on the ground and seek to agree on the value of the unamortized road construction.

On October 11, 1966, the purchaser applied for contract cancellation, and this was approved by the Forest Service the following day. The burned-over area was then divided into three salvage sales which were advertised and sold. Eagle Lake Timber Co. purchased one of these sales. It was essen-

tial that the completed and uncompleted road work be measured and evaluated before existing work was disturbed or further work was performed under the salvage sale contracts. Forest Service engineers started their fieldwork and evaluations on September 28, 1966, concluding the work by mid-October. During this period, Eagle Lake was invited to participate and was kept informed of results. On October 18, 1966, the Forest Service called Eagle Lake and furnished its final results which are reported herein.

On November 9, 1966, Eagle Lake advised the Forest Service that its subcontractor had hired an engineering firm to make evaluations. Subsequently, on February 21, 1967, the parties met in the local office of the Forest Service to compare results. No agreement was reached.

Results of the Forest Service evaluation are shown in the attached table. They are properly based on the estimated road costs used in the timber appraisal at the time the sale was advertised. Four roads were involved and are identified in the table as roads 28N25, 28N31, 28N35, and 28N02. As shown in the table accompanying the Agriculture report, the amount of road construction work not recovered by Eagle Lake Timber Co. at the time of contract cancellation is \$43,690. As has been noted, this is the amount stated in the bill.

The consulting engineer's report to the purchaser's logging contractor presented three alternative estimates of the unamortized portion of the completed road work. One estimate is \$71,175, which was the amount originally stated in the bill H.R. 6662 introduced in the 90th Congress. The other estimates are \$68,864, and \$44,154.

The purchaser's sale contract was similar to hundreds of others in existence at the time. Under them, purchasers are authorized to build roads needed for each sale. Prior to advertising, the Forest Service estimates the costs to an average efficient purchaser of building the roads. Such estimates, along with other estimated sale operating costs, are used in the timber appraisal to set advertised stumpage prices. Prices bid are for purchase of timber, not roadbuilding, and the contract is not considered a road procurement contract. Bidders make their own judgments of profit opportunities, including possible road costs. Also, purchasers customarily build roads ahead of logging needs in order to facilitate needed flow of logs.

In this particular case, the fire was of catastrophic magnitude with more than usual impacts on the purchaser's plans. In turn, the Forest Service was faced with need to reshape its plans to promote salvage of the damaged timber, both to capture value and to prevent an insect epidemic. Contract cancellation enabled the Forest Service to accomplish this expeditiously.

The Department of Agriculture in its report to the committee in the 90th Congress, stated that the road work which

had been completed at the time of the fire was a contribution to the speedy and successful salvage of the fire-damaged timber. The Department further noted that the advertised prices in the resales were enhanced by the amount of the appraised value of road construction which had been accomplished at the time of the fire. The result was that the Government realized the monetary benefits of the Eagle Lake Timber Co.'s road construction work which was not amortized because of the fire. Because of this fact and the other aspects of the case noted by the committee, the Department indicated it would have no objection to enactment of the earlier bill if the amount were amended to provide for a payment of \$43,690. This is the amount the company would have recaptured for the completed work if the sale had proceeded to conclusion.

The committee also received a report from the Comptroller General of the United States concerning the bill. The comments of the Comptroller General are also set out following this report. The General Accounting Office report indicated that it would not object to the favorable consideration of the earlier bill provided the amount be amended to \$43,690, which is the same figure recommended by the Agriculture Department. In this connection, the report of the Comptroller General stated:

"As noted above, contract No. 11-150 made no provision for recovery of road costs other than through amortization as the timber was cut and paid for by the purchaser. Since the Eagle Lake Timber Co. was unable to recover a substantial portion of its road construction costs because the contract was terminated by mutual consent of the parties as a result of a fire in the timber sale area, and since it is reported that the advance construction of the roads by the company did benefit the Forest Service, we would not object if H.R. 6662 were favorably considered by the Congress provided the amount stipulated therein be changed from \$71,175 to \$43,690."

Both the Department of Agriculture and the Comptroller General reports analyzed the basis for the figure \$43,690 now in the present bill, H.R. 1749. The committee is satisfied that this figure represents the actual loss suffered by the company and, therefore, it is recommended that the bill be considered favorably.

The committee has been advised that an attorney has rendered services in connection with this matter. The bill therefore carries the customary limitation on attorney's fees.

The committee concurs in the action of the House of Representatives, and recommends that the bill, H.R. 1749, be considered favorably.

Attached hereto and made a part hereof is a letter from the Department of Agriculture, dated July 9, 1968, and a letter from the Comptroller General, dated July 5, 1967.



DEPARTMENT OF AGRICULTURE,  
*Washington, D.C., July 9, 1968.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: As requested by your letter of March 14, 1967, here are our views on H.R. 6662, a bill for the relief of Eagle Lake Timber Co., a partnership, of Susanville, Calif.

H.R. 6662 would direct the Secretary of the Treasury to pay to the Eagle Lake Timber Co., the sum of \$71,175. The payment would be in full satisfaction of all the company's claims against the United States for compensation for losses incurred in connection with the performance of a timber sale contract between the company and the Forest Service. That contract (No. 11-150, dated May 25, 1964) covered the sale of an estimated 25,030 thousand board feet of national forest timber to Eagle Lake Timber Co.

The timber sale was awarded to Eagle Lake Timber Co., after it bid successfully against one other bidder. On September 5, 1966, most of the uncut portion of the sale was burned over by a fire caused by lightning. At the time of the fire, 10,592 thousand board feet of timber had been cut and removed. Most of the remaining timber designated for sale under the contract, totaling an estimated 14,438 thousand board feet, together with intermingled, undesignated timber which was intended to be left uncut, was affected by the fire. While both designated and undesignated timber affected by the fire were subject to deterioration, continuing over time, it nevertheless was merchantable. In such situations in California, it is both economically feasible and customary to salvage, log, and manufacture fire-affected timber into lumber products.

Shortly after the fire, Mr. John B. Crook, representing the Eagle Lake Timber Co., met with the Forest Service seeking relief under the sale contract. Mr. Crook was advised of the customary choices available under the contract. They were:

1. Continue operations, buying all fire affected timber on the sale at contract rates; and
2. Apply to have the contract canceled without liability for its incompleteness.

The Forest Service offered to explore a third possibility whereby Eagle Lake could continue operations buying all affected timber at contract rates, except in portions of the sale area where prefire sale operations had been entirely completed.

In response to Mr. Cook's inquiries, he was told that the Forest Service had no authority under the contract to reduce timber prices or to pay Eagle Lake for the cost of advance roadbuilding not yet recovered by timber cutting. Mr. Crook advised he would recommend to his firm that it apply for contract cancellation, and in that event, would seek enactment of a private relief bill. The Forest Service suggested, and it was agreed, that engineers representing each party would meet on the ground and seek to agree on the value of the unamortized road construction.

On October 11, 1966, the purchaser applied for contract cancellation, and this was approved by the Forest Service the following day.

The burned-over area was then divided into three salvage sales which were advertised and sold. Eagle Lake Timber Co. purchased one of these sales. It was essential that the completed and uncompleted road work be measured and evaluated before existing work was disturbed or further work was performed under the salvage sale contracts. Forest Service engineers started their field work and evaluations on September 28, 1966, concluding the work by mid-October. During this period, Eagle Lake was invited to participate and was kept informed of results. On October 18, 1966, the Forest Service called Eagle Lake and furnished its final results which are reported herein.

On November 9, 1966, Eagle Lake advised the Forest Service that its subcontractor had hired an engineering firm to make evaluations. Subsequently, on February 21, 1967, the parties met in the local office of the Forest Service to compare results. No agreement was reached.

Results of the Forest Service evaluation are shown in the attached table. They are properly based on the estimated road costs used in the timber appraisal at the time the sale was advertised. Four roads were involved and are identified in the table as roads 28N25, 28N31, 28N35, and 28N02. As shown in the table, the amount of road construction work not recovered by Eagle Lake Timber Co. at the time of contract cancellation is \$43,690.

The consulting engineer's report to the purchaser's logging contractor presented three alternative estimates of the unamortized portion of the completed road work. One estimate is \$71,175, which amount is used in H.R. 6662. The other estimates are \$68,864 and \$44,154.

The purchaser's sale contract was similar to hundreds of others in existence at the time. Under them, purchasers are authorized to build roads needed for each sale. Prior to advertising, the Forest Service estimates the costs to an average efficient purchaser of building the roads. Such estimates, along with other estimated sale operating costs, are used in the timber appraisal to set advertised stumpage prices. Prices bid are for purchase of timber, not roadbuilding, and the contract is not considered a road procurement contract. Bidders make their own judgments of profit opportunities, including possible road costs. Also, purchasers customarily build roads ahead of logging needs in order to facilitate needed flow of logs.

In this particular case, the fire was of catastrophic magnitude with more than usual impacts on the purchaser's plans. In turn, the Forest Service was faced with need to reshape its plans to promote salvage of the damaged timber, both to capture value and to prevent an insect epidemic. Contract cancellation enabled the Forest Service to accomplish this expeditiously.

The road work already accomplished at time of the fire was a contribution to speedy and successful salvage of the fire-damaged timber. In addition, advertised prices in the resales were enhanced by the amount of appraised value of road construction which has been accomplished at time of the fire. In effect, the Government realized the monetary benefits of the purchaser's road construction work which was not amortized because of the fire.

For these reasons, and if the Congress feels that the equities warrant it, we would have no objection to enactment of H.R. 6662 if the amount it would direct be paid to Eagle Lake Timber Co. were changed

to \$43,690. This is the amount the company would have recaptured for the completed road work if the sale had proceeded to conclusion.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

JOHN A. SCHNITTKER,  
*Acting Secretary.*

TIMBER SALE ROAD CONSTRUCTION ALLOWANCES

	Original appraisal	Work completed
Direct allowances:		
28N25-----	\$19,227	\$15,309
28N31-----	77,289	60,904
28N35-----	16,380	16,380
28N02-----	728	728
	113,624	93,321
Overhead allowances (merged in the appraisal with other logging costs)-----	22,798	18,724
Total-----	136,422	112,045
Recovered by timber cutting-----		68,355
Not recovered at time of contract cancellation-----		43,690

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., July 5, 1967.*

B-161072.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: By letter dated March 14, 1967, you transmitted copies of H.R. 6662, 90th Congress, first session, entitled "A bill for the relief of Eagle Lake Timber Co., a partnership, of Susanville, Calif.," and requested our views on this proposed legislation.

The bill would authorize the Secretary of the Treasury to pay \$71,175 to Eagle Lake Timber Co. on account of road construction costs, which it failed to recover under the amortization rates included in Forest Service timber sale contract No. 11-150 dated May 25, 1964. In the execution of the contract, the company was unable to recover a substantial portion of its road construction costs because the contract was terminated by the mutual consent of the parties as a result of a fire in the timber sale area.

The timber under the contract was located in the Plumas National Forest in the State of California. The Forest Service estimated that the sale area of about 2,576 acres contained approximately 25,030 thousand board feet of timber. Under section 5a of the contract, the purchaser agreed to cut and remove all timber from the sale area prior to December 1, 1966, however, the contract did not stipulate any starting date for logging of the timber. Section 5a of the contract identified as normal operation season as the period beginning on May 1 and ending on November 30 of any year.

No logging was performed in the sale area during 1964. Cutting of the timber was begun about June 2, 1965, and ended for the 1965 season on October 22, 1965. Logging had been stopped for about 1½ months during July and August due to a fire at the company's plant

which destroyed all facilities except the sawmill. Logging was resumed in 1966 and about 10,592 thousand board feet of timber had been cut when on September 5, 1966, a fire occurred which killed most of the 14,438 thousand board feet of timber remaining to be cut. Forest Service officials have informed us that the cause of the fire was in no way connected with the Eagle Lake Timber Co. The contract provided for selective cutting in the timber sale area; that is, the individual trees to be cut were marked or designated by the Forest Service. It is reported that the markings on the designated trees were burned over by the fire and that the trees selected for cutting could not be distinguished from the other trees in the sale area.

Following the fire, meetings were held between Forest Service officials and company personnel to discuss the alternatives open to the company. The Forest Service offered the company two options: (1) The contract could be canceled or, (2) the company could clear cut all the timber in the sale area at the same contract rates. The Forest Service has informed us that although fire-killed timber begins to deteriorate immediately, it has merchantable value for the production of lumber for approximately 2 years and that the option to clear cut the timber made available to the company about 15 or 25 million board feet of timber in excess of the amount originally purchased.

On October 11, 1966, the Eagle Lake Timber Co. submitted to the Forest Service a written request for cancellation of the timber sale contract stating that the fire had substantially destroyed the timber making the sale inoperable in accordance with the contract. The Forest Service approved the request of the company for cancellation of the contract on October 12, 1966. The burned-over timber areas of the fire were divided into three salvage sales which were advertised and sold shortly after cancellation of contract No. 11-150. One of the salvage sales was purchased by the Eagle Lake Timber Co. In its letter requesting cancellation of contract No. 11-150, the Eagle Lake Timber Co. also requested that consideration be given to crediting the company with the unamortized costs of the roads which it stated were virtually completed prior to the fire.

Contract No. 11-150 required the Eagle Lake Timber Co. to build four roads of about 7.59 miles in length numbered 28N02, 28N25, 28N31, and 28N35. Under the contract, road construction costs were estimated at \$113,624 and amortization rates were computed by allocating the estimated cost to the first 80 percent of the estimated volumes of the several species of timber to be cut in the sale. The resulting per-unit cost per species was credited to the company as the timber was cut. The record indicates that road construction had proceeded ahead of logging needs and, at the time of the fire, roads 28N35 and 28N02 were completed and roads 28N25 and 28N31 were very close to completion. It also indicates that the company has been able to recover through amortization about 52 percent of the estimated road costs.

In requesting relief for the unamortized road construction costs, the company indicated that road 28N31 was constructed in advance of normal construction as an accommodation to the Forest Service because the agency wanted to open up another timber sale area. The company also indicated that, as a result of this accelerated construction and the



subsequent cancellation of the contract because of the fire, it was unable to recover the costs incurred in the construction of the road.

The contract in question did not contain any language which specifically required the company to construct any of the four roads in advance of logging needs. The prospectus for the timber sale, however, stated that:

\* \* \* In order to allow continuation of an orderly timber sale program in this area, construction of road 28N31 should be completed by June 1, 1965. Provision for completion of this road will be made in the annual operating plan prepared in accordance with section 7a of the timber sale contract.

Section 7a of the timber sale contract provided that:

When so requested by the Forest Service, the purchaser shall, before the start of logging operations within the sale area, and prior to the start of operations each year thereafter, join with the Forest Service in preparing a plan of operations which shall be followed except as modified in writing.

The Forest Service has informed us that a completion date for road 28N31 was not included in the plan of operations for the sale area and that construction of road 28N31 was not started until about mid-May 1965 and was about 45 percent completed by August 13, 1965.

The Director, Division of Timber Management, has recommended that the Forest Service not oppose the granting of relief to the Eagle Lake Timber Co., provided such relief does not exceed the amount of \$43,690. The Director has indicated that he made such a recommendation because the company incurred unrecovered costs in constructing roads which were subsequently of benefit to the Forest Service and for the additional reason that the constructed roads enhanced the value of the fire salvage sales made by the Forest Service shortly after cancellation of contract No. 11-150. Also, we were informed by the Director that the contract made no provision for recovery of road costs other than through amortization as the timber was cut and paid for.

The estimated percentage of completion for the four roads was about 82 percent as computed by the Forest Service and about 90 percent as computed by the company. Forest Service records indicate that about 42 percent of the timber included in the contract had been cut and removed and, because the amortization rates were allocated over 80 percent of the timber volume, about 52 percent of direct road costs had been recovered. The computations were made to determine the amount of estimated \$113,624 road costs the company was entitled to but had not yet recovered.

The Forest Service and company estimates of unamortized road construction costs were computed as follows:

	Company estimate	Forest Service estimate	Difference
Estimated contract cost of 4 roads.....	\$113,624	\$113,624	0
Estimated percentage of completed construction.....	90.1	82.13	7.97
Estimated completed construction to be amortized.....	\$102,375	\$93,321	\$9,054
Amortized construction per contract rates.....	-58,581	-58,716	135
Estimated unamortized construction.....	43,794	34,605	9,189
Add:			
Profit.....	10,881	0	10,881
Unrecovered overhead.....	16,500	9,085	7,415
Recommended relief.....	71,175	43,690	27,485

The \$27,485 difference between the Forest Service and the company's estimates is primarily due to the differences in percentage of road completed, inclusion of profit and computation of unamortized overhead costs. These differences are discussed below.

#### PERCENTAGE OF ROAD COMPLETED

There are two primary differences in the methods used by the Forest Service and the company to estimate the amount of completed road construction and which account for the difference of 7.97 percent.

1. The Forest Service percentage was based on the construction completed on all four roads; the company percentage was based on the construction completed on only one of the four roads. Since the estimated contract cost of \$113,624 pertains to all four roads, we believe that the Forest Service approach is proper.

2. The Forest Service engineers estimated about 34,000 cubic yards of excavation remained to complete one road; and the company engineers estimated about 20,000 cubic yards of excavation remained. The Forest Service indicated that although about 18,000 cubic yards of excavation have subsequently been completed, almost one-half of the road is still incomplete. Under these circumstances, the agency's original estimate of 34,000 cubic yards of additional excavation would seem to be reasonable.

#### PROFIT

The company included a profit on road construction which is not included in the Forest Service's computation. The Forest Service reasons that contract No. 11-150 was a timber sale contract, not a contract for roadbuilding, and that a profit can be realized only when the timber is cut, removed, and sold. The agency is of the opinion that since the company did not cut and remove the timber, there is no assurance that the company would have realized a profit on road construction had the contract been completed.

#### OVERHEAD COSTS

The company's computation failed to exclude 42 percent of the estimated road overhead costs which theoretically were recovered by

the timber cut and removed prior to the fire. In the Forest Service appraisal computation, which established the stumpage value of the timber, certain indirect or overhead costs applicable to road construction were added to the logging costs. These logging costs were recovered as the timber was cut but the exact rates were not specified in the contract. The Forest Service computation, in our opinion, correctly deducted for the 42 percent of logging costs which theoretically were recovered in the sale of 10,592 thousand board feet of timber.

As noted above, contract No. 11-150 made no provision for recovery of road costs other than through amortization as the timber was cut and paid for by the purchaser. Since the Eagle Lake Timber Co. was unable to recover a substantial portion of its road construction costs because the contract was terminated by mutual consent of the parties as a result of a fire in the timber sale area, and since it is reported that the advance construction of the roads by the company did benefit the Forest Service, we would not object if H.R. 6662 were favorably considered by the Congress provided the amount stipulated therein be changed from \$71,175 to \$43,690.

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General of the United States.*



